

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5941 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KRISHNA TILES CO.

Versus

UNION OF INDIA

Appearance:

None present for Petitioner

MR JC SHETH for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03-03-97

C.A.V. JUDGEMENT

1. Heard learned counsel for the respondents and perused the Special Civil Application.

2. The petitioner, a registered partnership firm carrying on its business of manufacturing ceramic products, filed this Special Civil Application before this Court and prayer has been made that the respondents may be directed to deliver the steam coal equal in

weight and of the same quality and species (steam coal) at the rate prevalent on the date of delivery of one box wagon.

3. Briefly, the facts of the case are that the petitioner submitted an application to the Competent Authority for allotment of steam coal. The said Competent Authority allotted one Box-type wagon of steam coal and accordingly the petitioner placed an order with colliery for supply and loading of the steam-coal wagon. In compliance of the said order of the petitioner, the colliery at CHRM actually loaded 57.6 M.Tonnes of steam coal for despatch to the petitioner on or about 23rd June, 1983 and the respondent also issued relative Railway Receipt No.190590, Invoice No.136 dated 23rd June, 1983. The steam coal was to be delivered to the petitioner at Asarva-Ahmedabad loaded in box wagon No.ER.100643. The entire amount towards the price of coal has been paid and the petitioner has performed its part of the contract.

4. The grievance of the petitioner is that the respondents have not delivered the box wagon load of coal to the petitioner despite of approach to them from time to time. The petitioner sent a notice to the respondent in this respect and copy of which has been submitted on record as annexure 'B', but that too has gone unattended on the part of the respondents. In the notice, the petitioner demanded to arrange for match delivery as it has been reasonably apprehended that the wagon meant to be supplied to the petitioner had been unlawfully diverted and delivered to elsewhere, enroute or utilised by the railway administration.

5. The reply to this Special Civil Application has not been filed.

6. The petitioner has also not filed original document annexure 'A'. However, the claim of the nature which has been made by the petitioner should have been considered by the respondents. It is a case where the petitioner has come up before this Court after giving a notice to the respondent, but respondent has even not cared to acknowledge the said notice. The position is worst in this court. The respondents have not chosen to give reply to this Special Civil Application. In the absence of reply to this Special Civil Application, the contents of this Special Civil Application stands uncontroverted, but at the same time, in the absence of original documents as well as the fact that in this petition, a question of fact arises, whether the delivery

of goods were given to the petitioner by the railway authorities or not, which can only be decided by the authority on the basis of material produced before it, no decision on merits.

7. I consider it to be appropriate to dispose of this petition with the direction to the respondent, General Manager, Western Railway Administration, Church Gate, Bombay, to decide the claim of the petitioner which has been made by the petitioner in this Special Civil Application within a period of three months from the date of receipt of claim. The petitioner is at liberty to file its claim before the said authority within a period of one month from the date of receipt of certified copy of this order. In case, the petitioner does not file the claim before the said authority within the time granted by this court then it is not obligatory on the part of the respondent No.1, authority, to decide the same on merits. This Special Civil Application stands disposed of in the aforesaid terms. Rule stands disposed of in the aforesaid terms with no order as to costs.

zgs/-